

3.7 HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY (HIHWNMS)

The National Marine Sanctuaries Act 16 United States Code § 1431 et seq. authorizes the Secretary of Commerce to designate areas of the marine environment that possess conservation, recreational, ecological, historical, research, and educational, or aesthetic resources and qualities of national significance as National Marine Sanctuaries, and to provide comprehensive management and protection of these areas. To protect the area designated, any Federal action that is likely to destroy, cause the loss of, or injure a sanctuary resource must consult with the Secretary of Commerce prior to commencement and adhere to reasonable and prudent alternatives set by the Secretary of Commerce. To the extent practicable, consultation may be consolidated with other consultation efforts under other federal laws, such as the Endangered Species Act.

The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) (Figure 3.3.1.1.1-2) is one of fourteen established sanctuaries under the National Marine Sanctuaries Act. It was established in 1992 by the Hawaiian Islands National Marine Sanctuary Act, Title II, subtitle C of the Oceans Act of 1992. At inception of the HIHWNMS and through the *Hawaiian Islands Humpback Whale National Marine Sanctuary Final Environmental Impact Statement /Management Plan* (February 1997) and implementing regulations (15 Code of Federal Regulations §922.180), certain military activities were identified as exempt from the interagency consultation requirements and the prohibited activities designated under the National Marine Sanctuaries Act.

Specifically, the HIHWNMS Final Environmental Impact Statement (EIS)/Management Plan identified 28 offshore training operations and 20 open ocean training operations as “classes of military activities” conducted in the Hawaiian waters. Offshore activities are conducted within the 100-fathom isobath demarcation of the Sanctuary around the Hawaiian Islands. These classes of activities were noted to be conducted “by all the military services of the United States and, during combined operations, by military units from cooperating foreign nations or the State of Hawaii Department of Defense/National Guard” (U.S. Department of Commerce, National Oceanic and Atmospheric Administration and State of Hawaii, Office of Planning, 1997). The text of the EIS indicated seven examples of “types” of Department of Defense (DoD) military operations that occur in or around the sanctuary, and then bulleted “Other DoD Military Operations in the Hawaiian Islands” again noting whether each activities occurs within the 100 fathom isobath (the designated demarcation boundary of the Sanctuary around the Hawaiian Islands). Included in the list of seven examples of types is “Anti-submarine Warfare (ASW) Exercises.” The example indicates that “usually two per year, lasting several days with surface ships and submarines and including the use of expendable equipment such as smoke floats and bathythermograph probes” take place. However, the bulleted types of activities and Appendix F of the HIHWNMS EIS/Management Plan (see Exhibit C-1 of Appendix C) more thoroughly list the ASW events as both within and outside the 100 fathom isobath, using sonar (no mention of active or passive), sonobouys, and mine countermeasures using sonar. Additionally, non-ASW activities such as air-to-surface gunnery exercises, air combat maneuvers, air-to-surface missile/bombing exercises, air-to-ground strike warfare exercises, and amphibious exercises are listed as potential activities both outside and within the boundaries of the sanctuary. These types of activities can be combined into the Undersea Warfare Exercises (USWEX) or Rim of the Pacific (RIMPAC) exercise.

1 Under the HIHWNMS regulations, military activities are allowed within the sanctuary and not
2 subject to vessel/aircraft approach distances, discharge of materials prohibitions within the
3 sanctuary and consultation requirements if they are “classes of military activities, internal and
4 external to the Sanctuary, that are being or have been conducted before the effective date of
5 these regulations, as identified in the Final Environmental Impact Statement/Management Plan.”
6 If the military activity is proposed after the official date of the regulations, then the activity is also
7 an allowable activity but subject to prohibited activities provision under §922.184 (i.e.,
8 vessel/aircraft approach to humpback whale provisions, discharge of materials, etc.) unless the
9 military activities are not subject to consultation under the National Marine Sanctuaries Act (not
10 likely to destroy, cause the loss of, or injury to any sanctuary resource). Finally, any military
11 activity that is subsequently modified in a way that causes the activity to be “likely to destroy,
12 cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was
13 considered in previous consultation” is treated as a new military activity for which consultation
14 may be necessary.

15 Humpback whales (are endangered marine mammals and are therefore protected under
16 provisions of the Endangered Species Act and the Marine Mammal Protection Act wherever
17 they are found. Humpbacks are seen in the winter months in the shallow waters surrounding
18 the Hawaiian Islands where they congregate to mate and calve. The humpback population is
19 growing by an average of 7 percent annually. The current estimated population in Hawaiian
20 waters every year is 10,000, from November through May. The whales travel more than 3,500
21 mi from Alaska to Hawaii's warm waters to mate, give birth, and care for their calves. The
22 estimated 10,000 whales span more than a quarter-million square miles of ocean surrounding
23 Hawaii. The first whales of the season usually arrive around October, with the greatest number
24 seen around Hawaii between 1 December and 15 May. (National Oceanic and Atmospheric
25 Administration, 2007; Mobley, 2002)

26 The following sections describe areas of the Sanctuary, by island, that could be affected by
27 proposed Hawaii Range Complex (HRC) training and research, development, test, and
28 evaluation (RDT&E) activities.

29 **3.7.1 BIOLOGICAL RESOURCES—HIHWNMS**

30 **3.7.1.1 KAUAI—BIOLOGICAL RESOURCES—HIHWNMS**

31 The HIHWNMS includes a portion of the ocean north of Kauai, but not within the Pacific Missile
32 Range Facility (PMRF) vicinity, or in the Barking Sands Tactical Underwater Range (BARSTUR)
33 and the Barking Sands Underwater Ranges Expansion (BSURE) coverage areas (U.S.
34 Department of the Navy, 2001b). (U.S. Department of Commerce, National Oceanic and
35 Atmospheric Administration and State of Hawaii, Office of Planning, 1997)

36 Few training or RDT&E operations occur in the area north of Kauai originally included in the
37 Sanctuary. Warning Areas W-186 and W-188 airspace over the Open Ocean is outside the
38 Sanctuary boundary. The Warning Areas are used for missile, bomb, and gunnery exercises.
39 Air, surface, and underwater exercises are conducted in the surface area of W-186 and W-188.

1 Instrumentation at BARSTUR provides the capability to conduct ASW and Anti-surface
2 Underwater Warfare training. BSURE is also used for ASW and Anti-surface Underwater
3 Warfare training and to track submarines and torpedo firing.

4 **3.7.1.2 OAHU—BIOLOGICAL RESOURCES—HIHWNMS**

5 HIHWNMS areas are located off the northern and southeastern coastlines of Oahu. No current
6 HRC activities are being performed within the Sanctuary's boundaries and none are being
7 proposed.

8 **3.7.1.3 MAUI—BIOLOGICAL RESOURCES—HIHWNMS**

9 The Maui Offshore is an area situated around the islands of Maui, Kahoolawe, Lanai, and
10 Molokai, portions of which are within the HIHWNMS. The waters adjacent to Maui, Molokai, and
11 Lanai are important Navy training areas. The offshore area also includes the portion of Penguin
12 Bank that is within 12 nautical miles (nm) of the islands' coastlines. The area is used as a
13 submarine training area due to the unique characteristics of its acoustic environment and
14 shallow depths of 50 and 100 fathoms. Multiple in-water runs of exercise MK-48 torpedoes
15 (with no warheads) using one submarine as both target and launch platform also occur in the
16 Penguin Bank area. According to the HIHWNMS EIS/Management Plan, submarines conduct
17 post-overhaul shallow water dives and shallow water ASW operations in the vicinity of Penguin
18 Bank. Penguin Bank is the only shallow water area in Hawaiian waters suitable for initial
19 submerged testing, which is necessary for crew rescue. Submarines also conduct mine warfare
20 training at Penguin Bank.

21 According to the HIHWNMS EIS (U.S. Department of Commerce, National Oceanic and
22 Atmospheric Administration and State of Hawaii, Office of Planning, 1997), "... the waters
23 adjacent to Maui, Molokai, and Lanai are important training areas for Navy ships homeported in
24 Pearl Harbor. The channel between Maui, Lanai and Molokai is extensively used for biennial
25 RIMPAC [Rim of the Pacific] exercises, EOD/MCM [explosive ordnance disposal/mine
26 countermeasures] exercises, and as well for shallow-water ASW [anti-submarine warfare]...
27 The areas inside the 100-fathom isobath surrounding Maui, Molokai and Lanai, and specifically
28 the channel between these islands, are used for shallow-water ASW operations."

29 The presence of the endangered humpback whale in the region of influence is seasonal, with
30 peak concentrations in mid-February to mid-March. The whales seem to prefer areas within the
31 100-fathom contours such as the Molokai–Lanai–Maui–Kahoolawe channels and Penguin
32 Bank. Humpback whale sightings in the region of influence are mainly concentrated north of
33 Kahoolawe in protected channel areas. (Commander, Submarine Force U.S. Pacific Fleet,
34 1997; Naval Undersea Warfare Center Division Newport, Rhode Island, 2007)

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1 **3.7.1.4 HAWAII—BIOLOGICAL RESOURCES—HIHWNMS**

2 The Kawaihae Pier area is not included within the HIHWNMS, which is located off the
3 northwestern shore of Hawaii. Other than transiting the HIHWNMS to reach Kawaihae Pier, no
4 current HRC activities are being performed within the Sanctuary's boundaries and none are
5 being proposed.

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